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October 5, 2007

BY E-FILING

The Honorable Joseph J. Farnan, Jr.
United States District Court
844 King Street
Wilmington, DE 19801

Re: *Purdue Pharma Products L.P. et al. v. Par Pharmaceutical, Inc. et al.*, C.A. Nos. 07-255-JJF and 07-414-JJF

Dear Judge Farnan:

Following up on the September 6, 2007 Rule 16 Scheduling Conference, attached is a revised Proposed Joint Order Of Consolidation And Rule 16 Scheduling Order. The parties suggest that a *Markman* hearing be scheduled at the Court's convenience during the week of July 21-25, 2008.

Respectfully,

/s/ Rodger D. Smith II

Rodger D. Smith II (#3778)

cc: Clerk of the Court (By E-Filing)
Frederick L. Cottrell III, Esquire (By E-Filing)
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PURDUE PHARMA PRODUCTS L.P.,
NAPP PHARMACEUTICAL GROUP LTD.,
BIOVAIL LABORATORIES INTERNATIONAL,
SRL, and ORTHO-MCNEIL, INC.,

Plaintiffs/Counterclaim-defendants,

v.

PAR PHARMACEUTICAL, INC. and
PAR PHARMACEUTICAL COMPANIES, INC.,

Defendants/Counterclaim-plaintiffs.

Civil Action No. 07-255-JJF

Civil Action No. 07-414-JJF

**[PROPOSED] JOINT ORDER OF CONSOLIDATION AND
RULE 16 SCHEDULING ORDER**

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f), and in accordance with the Court's instructions at the September 6, 2007 Rule 16 Scheduling Conference,

IT IS ORDERED that:

Civil Action No. 07-255-JJF and Civil Action No. 07-414-JJF shall be consolidated for all purposes and filings shall be made in Civil Action No. 07-255-JJF. These two actions seek relief from alleged patent infringement based on the filing by defendants ("Par") of Abbreviated New Drug Application No. 78-783 ("ANDA 78-783"), seeking approval of the Food and Drug Administration (FDA) to market an extended release formulation of tramadol hydrochloride, an analgesic. The parties are the same in both actions, as is the patent in suit, U.S. Patent No. 6,254,887.

Moreover, since the September 6, 2007 Rule 16 Scheduling Conference, Par has served Plaintiffs with another notice letter directed to an additional strength of the same extended release formulation of tramadol hydrochloride set forth in ANDA 78-783 with respect to the same patent-in-suit. Plaintiffs will file an additional complaint based on this notice letter before this Court. That action shall also be consolidated with Civil Action No. 07-255-JJF and Civil Action No. 07-414-JJF for all purposes and filings shall be made in Civil Action No. 07-255-JJF.

The following schedule shall apply to the consolidated actions.

1. **Pre-Discovery Disclosures.** The parties have agreed to waive disclosure of the information required by Fed. R. Civ. P. 26(a)(1) and D. Del. LR 16.1, except that information required by Fed. R. Civ. P. 26(a)(1)(A) shall be exchanged upon completion of document production.

2. **Joinder of Other Parties.** All motions to join other parties shall be filed on or before March 5, 2008.

3. **Discovery.**

(a) Maximum of 25 interrogatories, including contention interrogatories, for each party upon any other party. As used in this sub-paragraph 3(i), Par Pharmaceutical, Inc. and Par Pharmaceutical Companies, Inc. constitute one party; Purdue Pharma Products L.P. and Napp Pharmaceutical Group Ltd. constitute one party; Biovail Laboratories International, SRL constitutes one party; and Ortho-McNeil, Inc. constitutes one party.

(b) Maximum of 50 requests for admission by each side, not including requests for stipulation relating to authenticity, which will be unlimited. Authentication of documents may also be handled by a separate stipulation.

(c) Depositions shall be limited to 144 hours per side, including depositions under Fed. R. Civ. P. 30(b)(6), but excluding expert depositions. Except for document retention or custodial depositions, depositions shall not commence until the discovery required by Paragraph 3(a) of the Court's form scheduling order (i.e., exchange of initial responses to contention interrogatories, exchange of initial identification of fact witnesses, and document production) is completed.

(d) Third-party fact discovery that is initiated ninety (90) days or more before the close of fact discovery shall be allowed to be completed if the delay in completion is because of foreign procedural requirements.

(e) With respect to expert depositions, each side shall be limited to 7 hours of expert deposition testimony for each expert witness who submits an expert report.

(f) Initial responses to contention interrogatories and initial identification of fact witnesses will be exchanged and document production will be completed by January 4, 2008.

(g) Fact discovery will be completed by May 15, 2008.

(h) Expert reports on issues on which parties bear the burden of proof will be submitted by May 30, 2008.

(i) Rebuttal expert reports will be submitted by July 1, 2008.

(j) Expert discovery will be noticed and completed by August 15, 2008.

4. **Non-Case Dispositive Motions.**

(a) Any non-case dispositive motion, along with an Opening Brief, shall be filed with a Notice of Motion. The Notice of Motion shall indicate the date on which the movant seeks to have the motion heard. The date selected shall be within 30 days of the filing of

the motion and allow for briefing in accordance with the Federal and Local Rules. Available motion dates will be posted on the Court's website at www.ded.uscourts.gov.

(b) At the motion hearing, each side will be allocated twenty (20) minutes to argue and respond to questions from the Court.

(c) Upon filing of the Notice of Motion, a copy of said Notice shall be sent to Chambers by email at: jjf_civil@ded.uscourts.gov.

(d) Motions in limine shall be filed and briefed so that all briefing is complete at least five business days before the Pretrial Conference.

5. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before March 21, 2008.

6. **Markman.** A Markman hearing will be scheduled at the convenience of the Court during the week of July 21-25, 2008. The parties will identify and exchange claim terms/phrases to be construed by the Court on May 16, 2008. The parties will exchange proposed claim constructions on May 23, 2008. Opening claim construction briefs are due by June 13, 2008; answering briefs are due by July 2, 2008. The Court, after reviewing the briefing, will allocate time to the parties for the hearing.

7. **Applications by Motion.**

(a) Any applications to the Court shall be by written motion filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (Amended Effective June 30, 2007). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1 and be made in accordance with the Court's December 15, 2006 Order on Procedures for Filing Non-dispositive motions in Patent Cases. Parties may file

stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No facsimile transmissions will be accepted.

(c) No telephone calls shall be made to Chambers.

(d) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: jjf_civil@ded.uscourts.gov. The e-mail shall provide a short statement describing the emergency.

8. **Pretrial Conference and Trial.** The Pretrial Conference will be held on October 16, 2008, and the trial will commence on November 10, 2008.

DATE

UNITED STATES DISTRICT JUDGE

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